THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 33705 OF 1998

Date: 22.06.2006

The Divisional Forest Officer, Logging Division, Bhadrachalam and others.

... Petitioners

and

D. Veeraiah.

... Respondent

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 33705 OF 1998

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This writ petition is filed aggrieved by the order passed in O.A.No. 6062 of 1997 dated 17.12.1997, wherein after taking note of the fact that the 1st respondent was initially appointed in 1980, was continued in service for three years till 1983, was subsequently again appointed in 1987 and after following several judgments of the Supreme Court in **Bhagwati Prasad Vs. Delhi State Mineral Development Corporation**[1], **A.K. Jain Vs. Union of India**[2] **H.C. Puttaswamy Vs. Chief Justice of Karnataka High Court**[3] and **J&K Public Service Commission Vs. Dr. Narinder Mohan**[4], the Tribunal held that it was a fit case where the government should exercise the power of relaxation of age qualification in favour of the 1st respondent herein keeping in view the fact that the 1st respondent was initially appointed as an NMR in the year 1980 and, after a break of four years, was continued in service for more than 17 years in the department. The Tribunal held that discharge of the1st respondent at this stage would amount to an act of cruelty. The petitioners herein were directed to reconsider the case of the 1st respondent for

regularization of his services by relaxing the qualification of age in his favour. The Tribunal directed that this exercise shall be completed within three months. During the pendency of this writ petition this Court, by order dated 03.12.1998, directed the 1st respondent to be continued on the same terms and conditions. With regards giving effect to the order of the Tribunal, this Court directed *status quo.*

Learned Government Pleader for Finance & Planning would submit that since the petitioner was over aged, his case for regularization was rightly rejected. Sri P.V. Ramana, learned Counsel for the 1st respondent, on the other hand would submit that the 1st respondent is now aged 55 years and was continuing in service pursuant to the interim orders of this Court. Learned Counsel would contend that to throw him out of service on the sole ground that he was over aged would clearly amount to an arbitrary act when the fact that the government had the power to relax the age limit for considering the case of an employee for regularization of his services was not in dispute. Rule-3, of the State and Subordinate Service Rules, confers such a power.

While Sri P.V. Ramana, learned Counsel for the 1st respondent would contend that the 1st respondent was employed from 1980, the learned Government Pleader would dispute this fact and submit that he was employed only from 1987. Be that as it may since the 1st respondent is continued in service, is now aged 55 years, we deem it appropriate to dispose of the writ petition modifying the order of the Tribunal with a direction that the petitioner herein shall consider the case of the 1st respondent for grant of relaxation of age limit in accordance with the Rules

without being influenced by any observations which may have been made by the Tribunal in its order in O.A.No. 6062 of 1997 dated 17.12.1997. This exercise shall be completed within a period of six months from the date of receipt of a copy of the order.

The writ petition is accordingly disposed of. However, in the circumstances, without costs.

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B.PRAKASH RAO,J

Date: 22-06-2006

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RAMESH RANGANATHAN,J

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[1] 1990 SC page 371

[2] 1987(Suppl.) SCC 497

[3] 1991 Suppl.(2) SCC 421

[4] (1994) 2 SCC 630